

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:99 CR 21

UNITED STATES,

v.

LUTHER JENKINS, IV,

Defendant.

ORDER

THIS MATTER IS before the Court on Defendant Luther Jenkins, IV's Motion to Dismiss Indictment Based on Defective Indictment Under the Fifth Amendment, (file doc. 53), filed on February 15, 2006.

On April 28, 1999, Defendant pled guilty to one count of possession with intent to distribute cocaine base and one count of possession of a firearm during and in relation to a drug trafficking crime. On November 3, 1999, a criminal judgment was entered, sentencing Defendant to 262 months imprisonment, after granting the Government's motion for a downward departure under United States Sentencing Guideline § 5K1.1. Although Defendant filed a timely notice of appeal, he later voluntarily dismissed this appeal. Thus, on December 2, 1999, the Fourth Circuit Court of Appeals granted Defendant's motion to voluntarily dismiss the appeal.

Next, on January 22, 2000, Defendant filed a Motion to Vacate pursuant to 28 U.S.C. § 2255, *Jenkins v. United States*, 3:00 CV 476. And, on January 21, 2003, this Court dismissed the Motion to Vacate with prejudice. Defendant appealed that decision and the Fourth Circuit denied the request for Certificate of Appealability on June 18, 2003. Likewise, Defendant's Petition for a Writ of Certiorari to the United States Supreme Court was dismissed on March 22, 2004.

Although numerous motions have been filed by Defendant recently, the Court will specifically refer to the motion filed on July 14, 2004, (file doc. 40), the Motion to Dismiss the Indictment Based on Defective Indictment in Violation of Due Process Under the Fifth Amendment. The Court denied the July 14, 2004 Motion for several reasons, all of which are stated in its February 7, 2006 Order, (file doc 48). The substance of the Motion currently before the Court is virtually identical to the July 14, 2004 Motion, which has already been ruled on by this Court. Accordingly, for the reasons stated in its February 7, 2006 Order, Defendant's Motion will be denied.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss Indictment Based on Defective Indictment Under the Fifth Amendment is hereby **DENIED**.

Signed: April 11, 2006



Richard L. Voorhees
Chief United States District Judge

